IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA, 1928

WP(C).No. 31853 of 2005(P)

OS.60/2002 of PRINCIPAL SUB COURT,PARAVUR

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PETITIONERS:

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1. M.A. BABU, S/O. ANTONY,
MAZHUVANCHERY HOUSE, KIDANGOORKARA,
THURAVOOR VILLAGE.

2. THRESSIAMMA ANTONY, W/O. ANTONY,
MAZHUVANCHERY P.O., KIDANGOOR KARA,
THURAVOOR VILLAGE.

BY ADV. SRI.T.R.RAVI

RESPONDENT:

CATHOLIC SYRIAN BANK,
BRANCH ANGAMALY, REPRESENTED BY ITS MANAGER.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM
SRI.P.JOSEPH SEBASTIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)31853/05

APPENDIX

PETITIONERS' EXHIBITS

EXT.P1: TRUE COPY OF SALE PROCLAMATION IN O.S.60/02 IN SUB COURT, PARAVUR DATED 19.4.04.

EXT.P2: TRUE COPY OF -DO - DO- DATED 1.10.05

EXT.P3: TRUE COPY OF CERTIFICATE ISSUED BY RESPONDENT SHOWING THE AMOUNTS PAID INTO THE BANK.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.31853 OF 2005

DATED THIS THE 1st DAY OF JANUARY, 2007

JUDGMENT

Petitioners are the judgment debtors and respondent the decree holder in O.S.60/02 on the file of Sub Court, North Paravur. Pursuant to the mortgaged decree, the mortgaged property was sought to sold in execution. This petition is filed under Article 227 of Constitution of India challenging the order of the executing Court directing sale of the entire mortgaged property. Case of petitioner is that only a part of the mortgaged property need be sold to realise the entire decree debt and therefore the direction to sell the entire properties is to be quashed.

2. As per order dated 15.11.05, petitioners were directed to deposit Rs.1,00,000/- before the executing Court for payment to the decree holder. Again as per orders dated 11.1.06 and 16.2.06 petitioners were directed to deposit Rs.1,00,000/- each. Subsequently, the writ petition was dismissed for non prosecution. When petitioners filed MJC 599/06 for restoration, they were directed to deposit Rs.1,00,000/- on 28.11.06. Petition was restored to file as per order dated 14.12.06 recording that all the amounts as directed by the Court earlier were deposited by the judgment debtors.

Learned Counsel appearing for petitioners submitted that now altogether more than Rs.4,60,000/- was paid after filing of this petition and major portion of the decree debt has already been satisfied. In such circumstances, this petition is disposed directing the executing Court, to consider whether it is necessary to sell the entire mortgaged property for realisation of the balance decree debt and whether sale of part of the property is sufficient to satisfy the decree debt and proceed with the sale only thereafter.

M.SASIDHARAN NAMBIAR,JUDGE

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